

1 THE HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

9 PORT OF SEATTLE,

10 Plaintiff,

11 v.

12 THE BOEING COMPANY,

13 Defendant.

No. 2:22-cv-00993-RAJ

**DECLARATION OF MARK W.
SCHNEIDER IN SUPPORT OF THE
BOEING COMPANY'S MOTION TO
STAY**

I, Mark W. Schneider, hereby declare:

1. I have personal knowledge of the facts stated below and am competent to testify
regarding the same. I am counsel for defendant The Boeing Company in this matter.

2. I have represented Boeing in connection with the Lower Duwamish Waterway
since 1996. In 2000, I assisted Boeing in the negotiation of the administrative order on consent
with EPA, the Port of Seattle, King County, and the City of Seattle for the performance of the
remedial investigation/feasibility study. I have represented Boeing since that time in the
implementation of the order and several amendments.

3. I assisted Boeing in the negotiation of the Alternative Dispute Resolution
Memorandum of Agreement in 2013 and 2014, and I have served as Boeing's lead counsel in the
eight-year Duwamish Allocation process. Attached as **Exhibit A** is a true and correct copy of the
Alternative Dispute Resolution Memorandum of Agreement, which was signed in 2014. The
schedule attached to the agreement has been updated several times.

1 4. Exhibit A describes the selection of the allocator (in Section 4) and the process for
 2 conducting the Duwamish Allocation (in Section 5).

3 5. The Port of Seattle, Boeing, and 43 other entities were “Participating Parties” (as
 4 that term is defined in Section 1.12 of Exhibit A) in the Duwamish Allocation process.

5 6. The objective of the allocation process was to allocate, among the Participating
 6 Parties, 100% of past and estimated future costs for cleaning up the Duwamish Waterway. *See Ex.*
 7 *A at 1 & Sections 1.2, 1.10.* Consistent with this objective, the final allocation report allocates
 8 100% of past and estimated future costs to the Participating Parties and the United States.

9 7. As part of the Duwamish Allocation, the allocator issued his final allocation report.
 10 On July 11, 2022, Boeing accepted the share assigned to it in the final allocation report. Other
 11 Participating Parties also accepted their shares.

12 8. Exhibit A (in Section 12.2) prohibits a Participating Party that remains in the
 13 Duwamish Allocation process from filing suit against another Participating Party. Boeing remains
 14 a Participating Party because it accepted its share. The Port of Seattle filed suit against Boeing on
 15 July 19, 2022.

16 9. I have participated in many discussions with representatives of the Environmental
 17 Protection Agency, the Department of Justice, and other Participating Parties regarding the
 18 Duwamish Allocation, negotiation of cash-out agreements with Duwamish Allocation parties, and
 19 negotiation of a consent decree to complete the cleanup of the Lower Duwamish Waterway. These
 20 potential agreements are described in Sections 8.2 and 8.3 of Exhibit A and are a contemplated
 21 part of the Duwamish Allocation.

22 10. Boeing accepted the share the allocator assigned to it in the Final Allocation Report
 23 so that it could move forward with negotiating settlement agreements with the remaining
 24 Participating Parties and a consent decree with EPA, consistent with Exhibit A. The remaining
 25 Participating Parties in the Duwamish Allocation process similarly wish to proceed with
 26 negotiating the cash-out settlements and a consent decree with EPA consistent with Exhibit A.

1 11. I have participated in many discussions among counsel for EPA, DOJ and the
 2 Participating Parties in which EPA counsel said that EPA would defer issuing special notice letters
 3 and begin consent decree negotiations until after the final allocation report was issued. During
 4 those calls, EPA counsel said that special notice letters would be issued and consent decree
 5 negotiations would start in October 2022. Attached as **Exhibit B** is a true and correct copy of a
 6 July 15, 2022 email from EPA's counsel to all Duwamish Allocation Participating Parties stating
 7 that EPA would "initiate RD/RA negotiations in October." This quoted language is highlighted in
 8 Exhibit B. "RD/RA" means remedial design/remedial action, and the EPA consent decree will
 9 require the parties to conduct the remaining remedial design and remedial action to complete the
 10 cleanup of the Lower Duwamish Waterway.

11 12. The remaining Participating Parties in the Duwamish Allocation have begun
 12 settlement negotiations in which parties with smaller assigned shares of responsibility, referred to
 13 as "cash-out" parties, will pay a lump sum amount to the "performing parties" that will perform
 14 the cleanup work. Those settlement discussions will continue. In addition to those settlement
 15 discussions among the remaining Participating Parties, the remaining Participating Parties and
 16 EPA will begin negotiations in October 2022 of a consent decree to complete the investigation and
 17 cleanup of the Lower Duwamish Waterway. In that consent decree, certain "performing parties"
 18 will agree to conduct the cleanup using their own funds and, in part, the funds they obtain in
 19 settlement from the cash-out parties. Boeing expects to be a performing party.

20 13. Attached as **Exhibit C** is a true and correct copy of an email from counsel for the
 21 City of Seattle, a Participating Party, expressing the City's support for Boeing's motion to stay.

22 14. Attached as **Exhibit D** is a true and correct copy of an email from counsel for Ash
 23 Grove Cement Company, a Participating Party, expressing the company's support for Boeing's
 24 motion to stay.

25 15. Attached as **Exhibit E** is a true and correct copy of an email from counsel for
 26 Crowley Marine Services, Inc. and 8th Avenue Terminals Inc. expressing the companies' support

1 for Boeing's motion to stay. The companies jointly participate in the Duwamish Allocation as a
2 single Participating Party.

3 16. Attached as **Exhibit F** is a true and correct copy of an email from counsel for Puget
4 Sound Truck Lines, a Participating Party, expressing the company's support for Boeing's motion
5 to stay.

6 17. Attached as **Exhibit G** is a true and correct copy of an email from counsel for
7 Hurlen; Hurlen Construction Company; Hurlen Logistics, LLC; Six Twenty South Logistics, LLC;
8 and Six Fourteenth South Logistics, LLC expressing the companies' support for Boeing's motion
9 to stay. The companies jointly participate in the Duwamish Allocation as a single Participating
10 Party.

11 18. Attached as **Exhibit H** is a true and correct copy of an email from counsel for Delta
12 Marine Industries, a Participating Party, expressing the company's support for Boeing's motion to
13 stay.

14 19. Attached as **Exhibit I** is a true and correct copy of an email from counsel for
15 Chiyoda International Corporation, a Participating Party, expressing the company's support for
16 Boeing's motion to stay.

17 20. Attached as **Exhibit J** is a true and correct copy of an email from counsel for
18 Northwest Container Services, Inc., a Participating Party, expressing the company's support for
19 Boeing's motion to stay.

20 21. Attached as **Exhibit K** is a true and correct copy of an email from counsel for
21 Glacier Northwest, Inc., a Participating Party, expressing the company's support for Boeing's
22 motion to stay.

23 22. Attached as **Exhibit L** is a true and correct copy of an email from an attorney at the
24 law firm Esbrook P.C. informing Boeing that the firm's client, a Participating Party, supports
25 Boeing's motion to stay.

1 23. Attached as **Exhibit M** is a true and correct copy of an email from counsel for
2 Seattle Iron & Metals Corporation, a Participating Party, expressing the company's support for
3 Boeing's motion to stay.

4 24. Attached as **Exhibit N** is a true and correct copy of an email from counsel for
5 PACCAR Inc., a Participating Party, expressing the company's support for Boeing's motion to
6 stay.

7 25. Attached as **Exhibit O** is a true and correct copy of an email from counsel for
8 Manson Construction Co., a Participating Party, expressing the company's support for Boeing's
9 motion to stay.

10 26. Attached as **Exhibit P** is a true and correct copy of an email from counsel for
11 Lafarge North America Inc., a Participating Party, expressing the company's support for Boeing's
12 motion to stay.

13 27. Attached as **Exhibit Q** is a true and correct copy of an email from counsel for
14 Holcim (US) Inc., a Participating Party, expressing the company's support for Boeing's motion to
15 stay.

16 28. Attached as **Exhibit R** is a true and correct copy of an email from counsel for
17 SeaTac Marine Properties LLC and SeaTac Marine Services expressing the companies' support
18 for Boeing's motion to stay. The companies jointly participate in the Duwamish Allocation as a
19 single Participating Party.

20 29. Attached as **Exhibit S** is a true and correct copy of an email from counsel for
21 Hanson Permanente Cement, Inc. and Kaiser Gypsum Co., Inc. expressing the companies' support
22 for Boeing's motion to stay. The companies jointly participate in the Duwamish Allocation as a
23 single Participating Party.

24 30. Attached as **Exhibit T** is a true and correct copy of an email sent on behalf of 12
25 separate Participating Parties expressing those parties' joint support for Boeing's motion to stay.
26 The parties are Ardagh Glass Inc.; Ball Corporation; Boyer Towing, Inc. and Boyer Logistics, Inc.

1 (who participate in the Duwamish Allocation as a single Participating Party); Continental Holdings
2 Inc.; Duwamish Shipyard, Inc.; Ford Motor Company; International Paper Company; The Lynden
3 Parties; Puget Sound Energy; S&JA Hale Family Limited Partnership; Silver Bay Logging, Inc.;
4 and Wells Fargo Bank, N.A.

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6 I declare under penalty of perjury that the foregoing is true and correct.
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8 EXECUTED this 18th day of August, 2022, at Seattle, Washington.
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/s/ Mark W. Schneider
Mark W. Schneider